

AMENDED IN ASSEMBLY APRIL 30, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 809

Introduced by Assembly Member Harman
(Principal coauthor: Assembly Member Vargas)
(Coauthors: Assembly Members Campbell and Chavez)

February 20, 2003

An act to amend, repeal, and add Section 25128 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 809, as amended, Harman. Bank and corporation taxes: apportionment: business income.

The Bank and Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, including extractive, savings and loan, banking and financial business activities, business income is apportioned in accordance with a specified 3-factor formula.

This bill would require for taxable years beginning on or after January 1, 2005, and before January 1, 2006, that all business income of a qualified taxpayer, as defined, unless certain requirements are not met by the qualified taxpayer, be apportioned to this state by multiplying

the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus 6 times the sales factor, and the denominator of which is 8, except that with respect to a certain qualified business activity, a trade or business would be allowed to apportion its business income based upon the revised formula or in accordance with the 3-factor formula, as provided. This bill would also provide that a taxpayer that is neither a qualified taxpayer nor engaged in a specified business activity must apportion its business income to this state in accordance with the 4-factor formula.

This bill would require, for taxable years beginning on or after January 1, ~~2005-2006~~, unless certain requirements are not met by the taxpayer, that *all business income of a qualified taxpayer, as defined*, be apportioned to this state by multiplying the business income by the sales factor, except that with respect to a certain qualified business activity, a trade or business would be allowed to apportion its business income based upon the revised formula or in accordance with the 3-factor formula, as provided. *This bill would also provide that if a taxpayer is neither a qualified taxpayer nor engaged in a qualified business activity, all business income of that taxpayer shall be apportioned to this state in accordance with the 4-factor formula.*

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25128 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 25128. (a) Notwithstanding Section 38006, for taxable years
- 4 beginning before January 1, 2005, all business income shall be
- 5 apportioned to this state by multiplying the business income by a
- 6 fraction, the numerator of which is the property factor plus the
- 7 payroll factor plus twice the sales factor, and the denominator of
- 8 which is four, except as provided in subdivision (b) or (c).
- 9 (b) If an apportioning trade or business derives more than 50
- 10 percent of its “gross business receipts” from conducting one or
- 11 more qualified business activities, all business income of the
- 12 apportioning trade or business shall be apportioned to this state by
- 13 multiplying business income by a fraction, the numerator of which



1 is the property factor plus the payroll factor plus the sales factor,
2 and the denominator of which is three.

3 (c) For purposes of this section, a “qualified business activity”
4 means the following:

5 (1) An agricultural business activity.

6 (2) An extractive business activity.

7 (3) A savings and loan activity.

8 (4) A banking or financial business activity.

9 (d) For purposes of this section:

10 (1) “Gross business receipts” means gross receipts described
11 in subdivision (e) of Section 25120 (other than gross receipts from
12 sales or other transactions within an apportioning trade or business
13 between members of a group of corporations whose income and
14 apportionment factors are required to be included in a combined
15 report under Section 25101, limited, if applicable, by Section
16 25110), whether or not the receipts are excluded from the sales
17 factor by operation of Section 25137.

18 (2) “Agricultural business activity” means activities relating
19 to any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
20 plantation, ranch, nursery, or range. “Agricultural business
21 activity” also includes activities relating to cultivating the soil or
22 raising or harvesting any agricultural or horticultural commodity,
23 including, but not limited to, the raising, shearing, feeding, caring
24 for, training, or management of animals on a farm as well as the
25 handling, drying, packing, grading, or storing on a farm any
26 agricultural or horticultural commodity in its unmanufactured
27 state, but only if the owner, tenant, or operator of the farm
28 regularly produces more than one-half of the commodity so
29 treated.

30 (3) “Extractive business activity” means activities relating to
31 the production, refining, or processing of oil, natural gas, or
32 mineral ore.

33 (4) “Savings and loan activity” means any activities
34 performed by savings and loan associations or savings banks
35 which have been chartered by federal or state law.

36 (5) “Banking or financial business activity” means activities
37 attributable to dealings in money or moneyed capital in substantial
38 competition with the business of national banks.

39 (6) “Apportioning trade or business” means a distinct trade or
40 business whose business income is required to be apportioned

1 under Sections 25101 and 25120, limited, if applicable, by Section
2 25110, using the same denominator for each of the applicable
3 payroll, property, and sales factors.

4 (7) Paragraph (4) of subdivision (c) shall apply only if the
5 Franchise Tax Board adopts the Proposed Multistate Tax
6 Commission Formula for the Uniform Apportionment of Net
7 Income from Financial Institutions, or its substantial equivalent,
8 and shall become operative upon the same operative date as the
9 adopted formula.

10 (8) In any case where the income and apportionment factors of
11 two or more savings associations or corporations are required to
12 be included in a combined report under Section 25101, limited, if
13 applicable, by Section 25110, both of the following shall apply:

14 (A) The application of the more than 50 percent test of
15 subdivision (b) shall be made with respect to the “gross business
16 receipts” of the entire apportioning trade or business of the group.

17 (B) The entire business income of the group shall be
18 apportioned in accordance with either subdivision (a) or (b), as
19 applicable.

20 (e) This section shall remain operative only until December 31,
21 2005, and as of that date is repealed.

22 SEC. 2. Section 25128 is added to the Revenue and Taxation
23 Code, to read:

24 25128. (a) *Notwithstanding Section 38006, for taxable years*
25 *beginning on or after January 1, 2005, and before January 1,*
26 *2006, all business income of a qualified taxpayer shall be*
27 *apportioned to this state by multiplying the business income by a*
28 *fraction, the numerator of which is the property factor plus the*
29 *payroll factor plus six times the sales factor, and the denominator*
30 *of which is eight, except as provided in subdivision (b) or (d).*

31 (b) *Notwithstanding subdivision (a), a qualified taxpayer shall*
32 *apportion all business income to this state by multiplying the*
33 *business income by a fraction, the numerator of which is the*
34 *property factor plus the payroll factor plus twice the sales factor,*
35 *and the denominator of which is four, provided its sales factor for*
36 *the taxable year is less than the average of its payroll and property*
37 *factors and it fails to meet both of the following:*

38 (1) *Its average number of employees in this state during the*
39 *taxable year is at least 90 percent of the average number of*

1 *employees employed in this state during the preceding five taxable*
2 *years.*

3 (2) *Any percentage decline in the number of employees in this*
4 *state between the current and immediately preceding taxable year*
5 *is less than or equal to any corresponding, cumulative percentage*
6 *decline with respect to all other states in which the taxpayer is*
7 *engaged in business.*

8 (c) *For purposes of paragraphs (1) and (2) of subdivision (b),*
9 *the payroll and employees of a member of a combined group that*
10 *is acquired or disposed of during the taxable year may not be*
11 *considered for the prior taxable years.*

12 (d) *A taxpayer not meeting the requirements of paragraphs (1)*
13 *and (2) of subdivision (b) shall nonetheless apportion its business*
14 *income according to subdivision (a) if the failure to meet any of*
15 *those requirements is due to a natural disaster or other act of God,*
16 *act of terrorism, or on action of federal, state, or local government.*
17 *“Action of federal, state, or local government” does not include*
18 *enforcement efforts directed at the illegal or fraudulent activities*
19 *of the taxpayer.*

20 (e) *The determinations under subdivision (b) shall be made for*
21 *each taxable year.*

22 (f) (1) *If an apportioning trade or business derives more than*
23 *50 percent of its “gross business receipts” from conducting a*
24 *business activity described in Principal Business Activity Code*
25 *211110, 324110, or 424700, as prescribed by the Internal Revenue*
26 *Service, the taxpayer may elect on a timely filed original return to*
27 *apportion all business income of the apportioning trade or*
28 *business to this state either in the same manner as a qualified*
29 *taxpayer pursuant to subdivisions (a), (b), (c), and (d), or by*
30 *multiplying business income by a fraction, the numerator of which*
31 *is the property factor plus the payroll factor plus the sales factor,*
32 *and the denominator of which is three.*

33 (2) *The one-time election of the apportionment formula shall*
34 *be made by contract with the Franchise Tax Board in the original*
35 *return for a year. The Franchise Tax Board shall prescribe the form*
36 *and manner of making the election. No election of the*
37 *apportionment formula may be made for a taxable year beginning*
38 *prior to January 1, 2005.*

39 (3) *An election of the apportionment formula may be*
40 *terminated by the taxpayer if either of the following occurs:*

1 (A) The taxpayer is acquired directly or indirectly by a
2 nonelecting entity that alone or together with those affiliates
3 included in its combined report is larger than the taxpayer as
4 measured by equity capital.

5 (B) With the permission of the Franchise Tax Board.

6 (g) If an apportioning trade or business derives more than 50
7 percent of its “gross business receipts” from conducting a savings
8 and loan activity or a banking or financial business activity, all
9 business income of the apportioning trade or business shall be
10 apportioned to this state by multiplying business income by a
11 fraction, the numerator of which is the property factor plus the
12 payroll factor plus the sales factor, and the denominator of which
13 is three.

14 (h) If an apportioning trade or business is neither a qualified
15 taxpayer nor required to apportion its business income pursuant
16 to subdivisions (f) or (g), all business income of the apportioning
17 trade or business shall be apportioned to this state by multiplying
18 the business income by a fraction, the numerator of which is the
19 property factor plus the payroll factor plus twice the sales factor,
20 and the denominator of which is four.

21 (i) For purposes of this section:

22 (1) Gross business receipts‘ means gross receipts described in
23 subdivision (e) of Section 25120 (other than gross receipts from
24 sales or other transactions within an apportioning trade or
25 business between members of a group of corporations whose
26 income and apportionment factors are required to be included in
27 a combined report under Section 25101, limited, if applicable, by
28 Section 25110), whether or not the receipts are excluded from the
29 sales factor by operation of Section 25137.

30 (2) “Apportioning trade or business” means a distinct trade or
31 business whose business income is required to be apportioned
32 under Sections 25101 and 25120, limited, if applicable, by Section
33 25110, using the same denominator for each of the applicable
34 payroll, property, and sales factors.

35 (3) In any case where the income and apportionment factors of
36 two or more corporations are required to be included in a
37 combined report under Section 25101, limited, if applicable, by
38 Section 25110, both of the following apply:

(A) *The more than 50 percent test, as described in subdivision (f) or subdivision (g), applies with respect to the “gross business receipts” of the entire apportioning trade or business of the group.*

(B) *The entire business income of the group is apportioned in accordance with subdivision (a), (b), (f), or (g), as applicable.*

(4) *“Taxpayer” means the aggregation of all persons filing a single combined report as permitted or required by the Franchise Tax Board pursuant to Section 25101.*

(5) *“Qualified taxpayer” means an apportioning trade or business described in Principal Business Activity Code 311900, 325410, 333200, 334110, 334410, 541519, or 512100, as prescribed by the Internal Revenue Service.*

(j) *Any change in the apportionment formula caused by this section, including any changes in the apportionment formula provided under subdivision (b), is not a consideration for granting a change of the water’s-edge election pursuant to subdivision (b) of Section 25111.*

(k) *If any word, phrase, or other provision of this section is found unconstitutional or otherwise unenforceable in a reported opinion of a California appellate court, the remaining provisions of this section shall remain in force and effect.*

(l) *This section shall become operative on January 1, 2005, and shall remain operative only until December 31, 2005, and as of that date is repealed.*

SEC. 3. *Section 25128 is added to the Revenue and Taxation Code, to read:*

25128. (a) *Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2005 2006, all business income of a qualified taxpayer shall be apportioned to this state by multiplying the business income by the sales factor, as defined in Section 25134, except as provided in subdivision (b) or (d).*

(b) *Notwithstanding subdivision (a), a taxpayer (other than a taxpayer described in subdivisions (f) or (g)) qualified taxpayer shall apportion all business income to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, provided its sales factor for the taxable year is less than the average of its payroll and property factors and it fails to meet both of the following:*

1 (1) Its average number of employees in this state during the
2 taxable year is at least 90 percent of the average number of
3 employees employed in this state during the preceding five taxable
4 years.

5 (2) Any percentage decline in the number of employees in this
6 state between the current and immediately preceding taxable year
7 is less than or equal to any corresponding, cumulative percentage
8 decline with respect to all other states in which the taxpayer is
9 engaged in business.

10 (c) For purposes of paragraphs (1) and (2) of subdivision (b),
11 the payroll and employees of a member of a combined group that
12 is acquired or disposed of during the taxable year may not be
13 considered for the prior taxable years.

14 (d) A taxpayer not meeting the requirements of paragraphs (1)
15 and (2) of subdivision (b) shall nonetheless apportion its business
16 income according to subdivision (a) if the failure to meet any of
17 those requirements is due to a natural disaster or other act of God,
18 act of terrorism, or on action of federal, state, or local government.
19 “Action of federal, state, or local government” does not include
20 enforcement efforts directed at the illegal or fraudulent activities
21 of the taxpayer.

22 (e) The determinations under subdivision (b) shall be made for
23 each taxable year.

24 (f) (1) If an apportioning trade or business derives more than
25 50 percent of its “gross business receipts” from conducting ~~an~~
26 ~~extractive business activity~~ *a business activity described in*
27 *Principal Business Activity Code 211110, 324110, or 424700, as*
28 *prescribed by the Internal Revenue Service*, the taxpayer may elect
29 on a timely filed original return to apportion all business income
30 of the apportioning trade or business to this state either *in the same*
31 *manner as a qualified taxpayer* pursuant to ~~subdivision (a)~~
32 *subdivisions (a), (b), (c), and (d)*, or by multiplying business
33 income by a fraction, the numerator of which is the property factor
34 plus the payroll factor plus the sales factor, and the denominator
35 of which is three.

36 (2) The one-time election of the apportionment formula shall
37 be made by contract with the Franchise Tax Board in the original
38 return for a year. The Franchise Tax Board shall prescribe the form
39 and manner of making the election. No election of the

1 apportionment formula may be made for a taxable year beginning
2 prior to January 1, 2005.

3 (3) An election of the apportionment formula may be
4 terminated by the taxpayer if either of the following occurs:

5 (A) The taxpayer is acquired directly or indirectly by a
6 nonelecting entity that alone or together with those affiliates
7 included in its combined report is larger than the taxpayer as
8 measured by equity capital.

9 (B) With the permission of the Franchise Tax Board.

10 (g) If an apportioning trade or business derives more than 50
11 percent of its “gross business receipts” from conducting a savings
12 and loan activity or a banking or financial business activity, all
13 business income of the apportioning trade or business shall be
14 apportioned to this state by multiplying business income by a
15 fraction, the numerator of which is the property factor plus the
16 payroll factor plus the sales factor, and the denominator of which
17 is three.

18 (h) *If an apportioning trade or business is neither a qualified*
19 *taxpayer nor required to apportion its business income pursuant*
20 *to subdivision (f) or (g), all income of the apportioning trade or*
21 *business shall be apportioned to this state by multiplying the*
22 *business income by a fraction, the numerator of which is the*
23 *property factor plus the payroll factor plus twice the sales factor,*
24 *and the denominator of which is four.*

25 (i) For purposes of this section:

26 (1) “Gross business receipts” means gross receipts described
27 in subdivision (e) of Section 25120 (other than gross receipts from
28 sales or other transactions within an apportioning trade or business
29 between members of a group of corporations whose income and
30 apportionment factors are required to be included in a combined
31 report under Section 25101, limited, if applicable, by Section
32 25110), whether or not the receipts are excluded from the sales
33 factor by operation of Section 25137.

34 ~~(2) “Extractive business activity” means activities relating to~~
35 ~~the production, refining, or processing of oil, natural gas, or~~
36 ~~mineral ore.~~

37 ~~(3)–~~

38 (2) “Apportioning trade or business” means a distinct trade or
39 business whose business income is required to be apportioned
40 under Sections 25101 and 25120, limited, if applicable, by Section

1 25110, using the same denominator for each of the applicable
2 payroll, property, and sales factors.

3 ~~(4)–~~

4 (3) In any case where the income and apportionment factors of
5 two or more corporations are required to be included in a combined
6 report under Section 25101, limited, if applicable, by Section
7 25110, both of the following apply.

8 (A) The more than 50 percent test, as described in subdivision
9 (f) or subdivision (g), applies with respect to the “gross business
10 receipts” of the entire apportioning trade or business of the group.

11 (B) The entire business income of the group is apportioned in
12 accordance with a subdivision (a), (b), (f), or (g), as applicable.

13 ~~(5)–~~

14 (4) “Taxpayer” means the aggregation of all persons filing a
15 single combined report as permitted or required by the Franchise
16 Tax Board pursuant to Section 25101.

17 (5) “*Qualified taxpayer*” means an apportioning trade or
18 business described in *Principal Business Activity Code 311900*,
19 *325410*, *333200*, *334110*, *334410*, *511210*, *541519*, or *512100*, as
20 prescribed by the Internal Revenue Service.

21 ~~(i)–~~

22 (j) Any change in the apportionment formula caused by this
23 section, including any changes in the apportionment formula
24 provided under subdivision (b), is not a consideration for granting
25 a change of the water’s-edge election pursuant to subdivision (b)
26 of Section 25111.

27 ~~(j)–~~

28 (k) If any word, phrase, or other provision of this section is
29 found unconstitutional or otherwise unenforceable in a reported
30 opinion of a California appellate court, the remaining provisions
31 of this section shall remain in force and effect.

32 ~~(k)–~~

33 (l) This section shall become operative on January 1, 2005
34 2006.

35 ~~SEC. 3.—~~

36 *SEC. 4.* Section 25128 of the Revenue and Taxation Code, as
37 amended by this act, may not be construed to affect or modify
38 Section 25136 of the Revenue and Taxation Code and the
39 regulations promulgated thereunder.

40 ~~SEC. 4.—~~

1 *SEC. 5.* This act provides for a tax levy within the meaning
2 of Article IV of the Constitution and shall go into immediate
3 effect.

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